

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

PUBLIC INTEREST LITIGATION NO.5 OF 2005

Dinesh Tukaram Pachkude : Petitioner
V/s.
The State of Maharashtra & Ors. : Respondents
...
Mr.Pramod N. Patil for the petitioner.
Mr.R. S. Apte for respondent No.2.

...
**CORAM : DALVEER BHANDARI, C.J. &
S.A. BOBDE, J.**

DATE : FEBRUARY 22, 2005.

P.C.:

1. The learned counsel for respondent No.2 states that reply-affidavit has been filed, but the same is not on record. The learned counsel for respondent No.2 to ensure that reply-affidavit is placed on record.

2. Pursuant to the show cause notice issued, reply-affidavit has been filed on behalf of respondent No.2. It appears that a small statue of late Anand Dighe has already been erected in the site allotted for that purpose. It appears to have been done after obtaining permission from the concerned authority. The learned

counsel for respondent No.2 states that respondent no.2 has received no objection from the concerned authorities. The Executive Engineer issued a communication to the concerned police station on 12.12.2001. The Government granted permission by its communication dated 8.1.2002 on certain terms and conditions such as inviting objections and opinions by publishing an advertisement regarding the light and security arrangements of the statue and that clay model of the statue should be got approved from the the Directorate of Art. It is also incorporated in the reply that an advertisement was published in the newspaper on 7.5.2002 by the Thane Municipal Corporation inviting objections and suggestions on or before 15.5.2002. It is also mentioned that no objection was received and, hence, the Thane Municipal Corporation granted permission on certain terms and conditions. It is also mentioned that the Directorate of Art, Government of Maharashtra, also accorded approval by its communication dated 9.9.2004. It is also mentioned in the reply that the General Body has granted sanction in its Resolution No.328 dated 19.9.2001 for erection of the said statue and for beautification.

3. On considering the totality of the facts and circumstances, the Thane Municipal Corporation has granted final approval and handed over possession of the site on the following conditions:-

- “i) The respondent no.3 will take the responsibility of keeping the area clean as also of the light and security arrangements at the suit site.
- ii) That if the statue is required to be shifted for the purpose of road widening in future, the same will be done by the respondent no.3 at its own costs, on the alternate site.
- iii) That the plans for beautification of the site should be submitted to the T. M. C.
- iv) And that all the expenditure for erecting the statue will be borne by respondent no.3.”

4. It is also mentioned in the reply-affidavit that erecting a small statue on a small area in a chowk does not amount to change of user as per the provisions of the M. R. T. P. Act. It is also mentioned that the high mast lamp is only shifted for its optimum use and not for any other purpose.

5. In view of the afore-mentioned averments, in our considered opinion, no interference is called for in exercise of our jurisdiction under Article 226.

6. Accordingly, the petition is rejected.

Sd/-

CHIEF JUSTICE

Sd/-

S.A. BOBDE, J.